

## **FACT SHEET**

### **Rulemaking to Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules**

#### **ACTION**

- On December 5, EPA took action to reaffirm the promulgation of certain revisions of the Acid Rain Program (ARP) rules in order to prevent disruption of the ARP, which has achieved significant, cost-effective reductions in sulfur dioxide (SO<sub>2</sub>) emissions from utility sources since its commencement in 1995.
- This action will not change any provisions of the ARP rules but will ensure that existing provisions, which have been in effect and in use since 2006 and generally are crucial to the ongoing operation of the ARP, will remain in effect.

#### **BACKGROUND**

- The ARP rule revisions whose promulgation EPA is reaffirming were finalized in the Federal Register notices that also finalized the Clean Air Interstate Rule (CAIR) and the Federal Implementation Plans for CAIR (CAIR FIPs). On July 11, 2008 the U.S. Court of Appeals for the District of Columbia Circuit issued a decision to vacate and remand CAIR and the CAIR FIPs to EPA.
- The ARP revisions whose promulgation EPA is reaffirming were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these ARP revisions, which are not related to CAIR or the CAIR FIPs, as unaffected by the Court's decision.
- However, EPA is reaffirming the promulgation of these revisions in order to remove any uncertainty about their regulatory status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of the ARP, and the rest of them streamline and clarify requirements of the program.
- The ARP revisions addressed by today's action include three types of revisions:
  - The first type changed the allowance-holding requirement in the SO<sub>2</sub> trading program from unit-level to facility-level.
  - The second type explicitly allowed the use of agents by designated representatives, while holding designated representatives ultimately responsible for any agent's actions.
  - The third type of ARP revisions was a miscellaneous group of technical changes streamlining and, in some cases, clarifying the ARP rules.
- EPA is concerned that the ARP rule revisions are too important to the ongoing operation of the ARP to allow for any ambiguity concerning their status, which may arise because of the Court's decision. This is particularly true for the revisions that significantly affect how SO<sub>2</sub> allowance transfers are made and recorded, how owners and operators submit quarterly emissions reports, and how EPA compares each year the amount of allowances held and the amount of SO<sub>2</sub> emissions. Allowance transfer, emissions reporting, and the comparison of emissions and allowances are matters that go to the heart of the ARP.

## ADMINISTRATIVE PROCEDURES USED IN THIS ACTION

- EPA published three related actions reaffirming the promulgation of the ARP revisions—an interim final rule, a direct final rule, and a parallel proposed rule. The direct final and proposed rules will also withdraw and in effect replace the interim final rule.
- The interim final rule will be effective immediately upon publication in the Federal Register and will continue in effect for a year unless it is withdrawn on an earlier date by the direct final rule or (if the direct final rule itself is withdrawn) the final rule addressing these rule revisions.
- By publishing a direct final rule and parallel proposed rule at the same time as the interim final rule, EPA is providing the opportunity for public comment. This approach will ensure both that the public will have an opportunity to comment on these ARP rule revisions and that the revisions will continue in effect in the meantime on an interim basis.
- Written comments on the rule must be received by approximately 45 days from the date of publication in the Federal Register (see direct final or proposed rule for specific date). If EPA receives no adverse comment during the comment period, the Agency will not take further action on the proposed rule.
- The direct final rule will become effective 120 days from the date of publication in the Federal Register without further notice, unless EPA receives adverse comment on the rule by approximately 45 days from date of publication in the Federal Register. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the Federal Register informing the public that the direct final rule is withdrawn and will not take effect and that the interim final rule is not withdrawn.

## PUBLIC HEARING AND PUBLIC COMMENT

- This rule will be open for public comment for approximately 45 days from the date of publication in the Federal Register (see rule for specific date).
- The proposed rule, including information on how to submit comments, is available on EPA's website, along with the interim final rule and direct final rule: [www.epa.gov/airmarkets](http://www.epa.gov/airmarkets).
- If requested, EPA will hold a public hearing on this action in Washington, DC. If held, the hearing will be at least 15 days after the date of publication of this action in the Federal Register (see rule for specific date). Any person may request a hearing by contacting Dwight Alpern by telephone or email by 7 days after the date of publication in the Federal Register ((202) 343-9151, [alpern.dwight@epa.gov](mailto:alpern.dwight@epa.gov)). See [www.epa.gov/airmarkets](http://www.epa.gov/airmarkets).
- To comment on this action, submit your comments, identified by Docket ID Number EPA-HQ-OAR-2008-0774, by one of the following methods:
  1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
  2. Mail: "EPA-HQ-OAR-2008-0774," Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

3. Hand Delivery or Courier. Deliver your comments to: Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 20460.

#### **FOR MORE INFORMATION**

- To download the interim final rule, direct final rule, and proposed rule, go to the following address: <http://www.epa.gov/airmarkets>
- For more information, please contact Dwight Alpern of EPA's Office of Atmospheric Programs by phone at (202) 343-9151 or by email at [alpern.dwight@epa.gov](mailto:alpern.dwight@epa.gov).